

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 403 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

VELJIBHAI RANABHAI MERIYA

Versus

RADHA VERA VANIYA

Appearance:

1. Criminal Revision Application No. 403 of 2000
MR NALIN K THAKKER for Petitioner No. 1
MR KB ANANDJIWALA for Respondent No. 1-2
Ms Nandini V Joshi, APP for Respondent No. 3
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/01/2003

ORAL JUDGEMENT

The petitioner herein, the original complainant,

has preferred this criminal revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), in order to challenge the judgment and acquittal order dated 1.7.2000 recorded by the learned Addl. Sessions Judge, Gandhidham in Kachchh District in Special Case No.25/2000 under which the learned Judge acquitted respondents no.1 and 2 from the offence punishable under sections 302, 306 and 498-A and 201 of IPC extending benefit of doubt to them.

2. The facts of the case of the prosecution in the aforesaid case before the trial court may be briefly stated as follows:

Respondent no.2 herein had married late Nirmala in the month of May, 1999. At that time, their age was 23 and 19 years respectively. Thereafter, as per the custom of the caste, Nirmala was sent to the house of her in-laws in August, 1999. Thereafter, on 27.12.1999, the father of respondent no.2 who happens to be respondent no.1 herein had approached the said complainant saying that the deceased had committed suicide. The mother of Nirmala and other persons had gone to the village of the contesting respondents and enquired about the said fact. It was noticed that deceased Nirmala was lying in the house of the contesting respondents and she had already died. The mother of the deceased noticed some injuries on the neck of the deceased. However, she remained silent and returned to her village. Thereafter, she told her husband about the aforesaid position and thereafter a FIR was filed on 28.12.1999 at about 11.45 a.m. for the offences punishable under section 302, 306, 498-A and 201 of IPC.

3. In the meantime, the dead body of the deceased was buried. On account of the aforesaid FIR, investigation was undertaken and the dead body of the deceased was taken out and it was sent to hospital at Anjar, Kachchh district for examination and after some examination the said hospital referred the dead body to the Civil Hospital at Jamnagar for appropriate examination and opinion. In the meantime, the investigation went ahead. During the course of the investigation, the Investigating Police Officer arrested the two respondents herein and panchnama was drawn with respect to the place of incident, muddamal articles were seized, injury certificates were collected from the concerned hospital. Post-mortem report and appropriate certificate from the Civil Hospital at Jamnagar were also collected. At the end of the investigation, charge sheet was filed against the first two respondents for the

aforesaid offence.

4. The offence punishable under sections 302 of IPC was one exclusively triable by the Sessions court. Therefore, the learned Magistrate committed the case to the Court of Sessions. There the case came to be registered as Sessions Case No.25/2000. The learned Addl.Sessions Judge supplied copies of the police investigation papers to the contesting respondents. The charge was framed for the aforesaid offence. It was read over and explained to the contesting respondents. The contesting respondents pleaded not guilty to the said charges and, therefore, evidence was recorded. On the conclusion of evidence, further statements were recorded under section 313 of the Code. Arguments were heard and by pronouncing the judgment on 1.7.2000, the learned Judge found that the prosecution had failed to bring home charge to the contesting respondents. Accordingly the contesting respondents came to be acquitted on application of principles of grant of benefit of doubt.

5. Feeling aggrieved by the said judgment and acquittal order of the learned Addl.Sessions Judge, Gandhidham, Kachchh, the petitioner herein, being the original complainant and father of the deceased Nirmala, has preferred this revision application before this court. It has been mainly contended here that the learned trial Judge has committed serious illegality in appreciating the evidence before him. It is further contended that the judgment and acquittal order are illegal and perverse. That several aspects of the case have been totally lost sight of, that no prudent person would record such a finding. That the findings arrived at by the learned Judge are, therefore, illegal and perverse and, therefore, it would be necessary for this court to exercise its revisional jurisdiction and to pass appropriate, just, legal and proper order after quashing and setting aside the said judgment and acquittal order of the trial court. On receiving the revision application, it has been admitted and rule was issued to and served on the respondents. In response to the service of notice of rule, Mr K B Anandjiwala, learned Advocate has appeared for respondents no. 2 and 3 whereas learned APP has appeared on behalf of the State. I have heard the learned Advocates for the parties and have perused the papers. In fact the learned Advocates for the parties have taken me through the evidence on record and the judgment recorded by the trial court.

6. Mr N K Thakkar, learned Advocate appearing for

the petitioner has argued at length that there was a very short period of about 7 months between the date of marriage and the date of death of the deceased. There is no serious dispute about the same. It is an admitted position that the marriage took place in May, 1999. Deceased Nirmala was sent to her in-laws place in August 1999 and the aforesaid incident took place on 27.12.1999. Therefore, there was hardly a period of 7 months between the date of marriage of Nirmala with respondent no.2 and the date on which Nirmala died. Therefore, there being no dispute on facts on this issue, it is an agreeable position before this court also.

7. Then, it is also not much in dispute that the fact of death was conveyed to the petitioner on 27.12.1999 and the mother of deceased Nirmala had gone to the village of the respondents and saw the dead body of the deceased. Thereafter, FIR was filed on 28.12.1999 before Anjar police station at 11.45 a.m. for the aforesaid offence. In the meantime, the dead body of deceased Nirmala was buried. There is also no serious dispute about the aforesaid fact.

8. Learned Advocate for the petitioner has argued at length that the death took place only 7 months after the marriage of respondent no.2 with Nirmala and that fact should be considered in a proper perspective. Since the aforesaid factual aspects are not at all in dispute, one has to accept the said factual aspect. But simply because the death took place within 7 months of the marriage, there cannot be an inference drawn against the contesting respondents that they committed murder of the deceased or they committed abatement to the alleged act of suicide unless there is some further material on record to connect the contesting respondent with the offence. One of the circumstances on which the learned Advocate for the petitioner has relied is that the deceased was not liked by respondent No.2 and, therefore, he committed murder of the deceased or he committed abatement to an act of suicide. On going through the evidence on record, I do not find any substance in the aforesaid argument. The records do not disclose that the deceased was not liked by respondent No.2. At least nothing has been brought on record to show that before the date of incident, the aforesaid fact was conveyed by the deceased to her mother or father. Even the mother has told for the first time during the course of investigation about the aforesaid fact. It has also not been stated even in the FIR. The learned Advocate for the petitioner was not in a position to read out to me that the mother of deceased Nirmala saying that Nirmala

had conveyed her that she was not liked by the second respondent. Therefore, this fact comes out for the first time on record during the course of the trial and therefore, it would not be very much proper on the part of the court to accept the said fact as true.

9. It has then been argued by Mr Thakkar on behalf of the petitioner that the second respondent in the company of deceased Nirmala had gone to the house of the parents of the deceased about seven days before the date of the incident. This would mean that they must have visited the place of the parents of the deceased around 20.12.1999. Here the mother has deposed before the trial court that deceased Nirmala had told her that the second respondent had some extra marital affair with one Seema and he had inscribed her name 'Seema' on his hand also. Now, this has also come on records for the first time through the evidence of the mother of the deceased. This fact was not there in the FIR lodged by the mother. On the contrary, during the course of investigation, it was noticed that the relationship between Nirmala and respondent no.2 was cordial. Name of Seema has come for the first time on record after the death of the deceased. Then there is no material to show that the name of Seema was inscribed on the hand of the second respondent. Arrest panchnama does not support the said case of the mother of the deceased. There is no other material on record to prove the said fact. Therefore, the alleged relationship of Seema with the second respondent cannot be held to have been proved.

10. Then it has been argued that as per the evidence of the Medical Officer, there was swelling on the neck of the deceased. This can be gathered from the evidence of the Medical Officer and the medical certificate issued by him. It can also be gathered from the post-mortem note. There is no serious dispute about the same. At the same time, the evidence of the Medical officer goes to show that this injury can be caused either by pressure of hand or by any other pressure. It is the case of the defence that the deceased had committed suicide and in an attempt to commit suicide, she had wrapped some string around her neck and because of the aforesaid attempt to commit suicide, she must have suffered injury on the neck. The Medical Officer has also states that the said injury was possible even on account of the pressure of a string. This further shows that it is a matter of doubt as to whether the marks of injury sustained on the neck were on account of manual pressure or on account of the pressure of string. In that view of the matter, when a particular fact creates reasonable doubt, benefit thereof has to go

to the accused and not to the prosecution. The probability of such injury marks on the neck of the deceased on account of the pressure of the string cannot be ruled out.

11. It has then been argued that the dead body was found in the house of the second respondent and, therefore, the second respondent should be able to explain as to how the dead body came to be there in his house. After all it is a matter to be investigated by the Investigating Officer. It is not clear as to whether the deceased died inside the house or outside it. The Investigating Police Officer should have examined this aspect properly and should have brought some material to show that the deceased died in the house of the second respondent. Any way, there are some shortfalls on the part of the prosecution in proving their case. In fact if surrounding witnesses had been examined, this fact could have been proved by the prosecution. But no such witness has been examined to prove as to how and where the deceased died and how the dead body was found lying in the house of the contesting respondent.

12. It has, then been argued by the learned Advocate for the applicant that deceased Nirmala had conveyed the fact about the affairs of the second respondent with one Seema to the mother of the deceased and the mother has deposed the said fact before the trial court. It is also argued by him that the deceased had conveyed to her mother that the second respondent had bought sari for Seema and not for Nirmala. It is true that the mother had deposed the said fact before the court but it seems that the said fact comes on record for the first time during the course of her evidence at the trial. This was not a fact at the stage of investigation and when a particular fact is introduced for the first time during the course of trial, it would be very difficult for the court to accept the said fact.

13. Then it has also been contended that though the mother had conveyed it to the second respondent not to deal with the dead body of the deceased, the contesting respondent actually dealt with the dead body of the deceased and buried the body also. It is, therefore, argued by Mr Thakkar, Learned Advocate for the petitioner that this shows a serious adverse conduct on the part of the second respondent and that should be considered and dealt with accordingly. It is true that the dead body was buried before the FIR could be filed. But here the fact remains that since the dead body was buried it was available for medical examination to the doctors and the

doctors have actually examined the dead body of the deceased. Even on examination of the dead body, no shortfall could be derived. Therefore, the fact that the dead body was buried before the FIR could be filed, it cannot and does not go against the case of the contesting respondent. Even, Mr K B Anandjiwala, learned Advocate appearing for the second respondent has also taken me through the evidence on record. It has come out that some injury marks were noticed on the neck of the deceased. At the same time, the post-mortem took place about three days after the death of the deceased. There was a process of decomposition of the body of the deceased and, therefore, it could not be said that the position of the dead body of the deceased was noticed at the time of medical examination was the same as it was there on 27.12.2002, the date of the death of the deceased.

14. It is required to be considered that the learned Executing Magistrate has carried out inquest report and the said inquest report shows something different from what has been said by the Medical Officer, Civil Hospital, Jamnagar. Even if we agree that there was injury on the neck of the deceased, then it is not further established that this injury was there only because of manual pressure and not for any other reason. Even Ms. Nandini Joshi, learned APP arguing the matter on behalf of the state also supports the judgment stating that the evidence on record is insufficient to hold the petitioner guilty of the offence in question. She has supported the judgment and reasonings of the trial court recorded in the judgment. Any way, on going through the evidence on record, the only circumstance which requires consideration is that the dead body was buried before the FIR could be filed. It is the say of the mother that she has conveyed the contesting respondent, not to dispose of the dead body but at the same time, this fact is also a matter of a disputed question of fact between the parties. This evidence of the mother has not been corroborated by any other material. Therefore, it also becomes doubtful whether the mother had conveyed this fact to the contesting respondent not to bury the dead body of the deceased after the visit of the deceased, and, therefore, it would not be a circumstance against the interest of the defence. At least this fact cannot lead us to an inference that the contesting respondents have committed the murder of the deceased. Therefore, on the one hand there is no evidence to show that the contesting respondents have caused the murder of the deceased, on the other hand, the evidence on record is insufficient to hold that the contesting respondents have

abated the commission of suicide by the deceased. In fact it is again doubtful whether it is a case of homicidal death or suicidal death. If it is a homicidal death, there is no question of abatement of suicide. At the same time, if it comes to suicide and abatement of suicide, then there is no question of murder as two things cannot go together.

15. So far as the offence under section 498-A is concerned, it is required to be proved that the husband or relative of the husband of a woman has subjected the said woman to cruelty. In the present case, we find that there is no slightest evidence on record to show that the contesting respondents did treat deceased Nirmala with cruelty. Mr Thakkar, learned Advocate for the petitioner has argued that there was physical and mental cruelty. So far as physical cruelty is concerned there is absolutely no evidence on record. On the other hand, so far as mental cruelty is concerned, the allegation is with respect to alleged affair between the deceased and Seema. However, there is no further material on record to show that there was some sort of affair between the two. Therefore, so far as the offence under section 498-A of IPC is concerned, there is absolutely no evidence on records to even suggest that the two respondents had extended some sort of physical or mental cruelty to the deceased. Any way, learned Advocates for the parties have taken me through the evidence on record. They have also taken me through the reasonings and findings recorded by the trial court during the course of the judgment. On going through the said material on record, I am of the view that the reasonings and findings recorded by the trial court are not against the weight of evidence on record.

16. It is required to be considered that the a Judge or a Magistrate dealing with a criminal case and acquitting the accused has always an opportunity of noticing, the demeanor of the witnesses while they tender oral testimony from the witness box. Therefore, the reasonings and findings of the trial court are not required to be brushed aside very lightly. Even there is always presumption in favour of the accused person that he is not guilty till he is proved to be guilty. This is not a conviction appeal. This is not even an acquittal appeal but it can be said to be an acquittal revision. Therefore, the reasonings and findings of the trial court cannot be lightly brushed aside in a criminal revision application. It is, therefore, clear that the trial court has committed no error in appreciation of evidence. In a revision, the court cannot undertake reappreciation

of evidence. However, even on appreciation of evidence on record, it is found that the findings and reasonings of the trial court are not found to be illegal and perverse and against the weight of evidence on record. Therefore, it is found that there is no merit in the present revision and it is required to be dismissed.

17. At this stage, learned Advocate for the contesting respondents has relied upon a decision of the Hon'ble Supreme Court in the case of Bansi Lal and Ors. v. Laxman Singh, reported in AIR 1986 SC 1721. The relevant portion of the said decision is reproduced hereunder:

"It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial court, that the High Court is empowered to set aside the order of the acquittal and direct a retrial of the acquitted accused. From the very nature of this power it should be exercised sparingly and with great care and caution. The mere circumstance that if finding of fact recorded by the trial court may in the opinion of the High Court be wrong, will not justify the setting aside of the order of acquittal and directing a retrial of the accused. Even in an appeal the Appellate Court would not be justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial court on the appreciation of the evidence. The revisional power of the High Court is much more restricted in its scope. Delhi High Court's decision, reversed."

18. The revisional power, function and jurisdiction of this court are very limited. These powers are necessarily less than those in an acquittal appeal. This Court cannot substitute its opinion and finding for the opinion and finding of the trial court even if it is possible to have a second opinion on second finding. Any way, in the case on hand, it is clearly noticed that the trial court was justified in recording a judgment of acquittal and it is not possible to take a view different from the one recorded by the trial court. This shows that this revision application is meritless and hence it deserves to be dismissed.

19. For the foregoing reasons, this revision application is ordered to be dismissed. Rule is

discharged.

16.1.2003 [D P Buch, J.]

msp